## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

NO. 7:12-CR-138-FL

| ROBERT TODD MARSH,        | ) |       |
|---------------------------|---|-------|
| Petitioner,               | ) |       |
| r entioner,               | ) |       |
| v.                        | ) | ORDER |
| UNITED STATES OF AMERICA, | ) |       |
| OTTILD STATES OF AMERICA, | ) |       |
| Respondents.              | ) |       |

Petitioner filed on April 21, 2014, a motion to amend/correct sentence and on May 2, 2014, a motion to supplement regarding the same (DE 28, 30), pertaining to a judgment entered September 19, 2013, under which petitioner was sentenced to a term of 131 months imprisonment. On May 22, 2014, the court provided notice that it intended to recharacterize the motion and supplement as an attempt to file a motion under 28 U.S.C. § 2255, directing petitioner to respond as to whether he so consents. Petitioner filed on June 16, 2014, a notice of consent to convert his motion and supplement into a § 2255 motion, accompanied by a signed form § 2255 motion. Petitioner requests that all previous filed motions and exhibits be attached to his form § 2255 motion, and he cross references his prior motion to amend to be construed as a memorandum in support of three grounds asserted for relief, which are as follows:

<u>Ground one</u>: Petitioner's sentence is procedurally unreasonable and substantively unreasonable in light of <u>United States v. Davis</u>.

<u>Ground two</u>: The court erred in adopting the PSR points calculation in assigning 2 additional points for unsupervised probation (PSI Line 18 & 23).

<u>Ground three</u>: The court and prosecution erred by failing to follow the Justice Dept. & Attorney General sentencing directive for all who had not been sentenced as of

August 17, 2013.

The clerk is DIRECTED to file petitioner's form § 2255 motion, and the previously filed motion and supplement as memoranda in support thereof, and upon such filing to terminate DE 28 and 30 as separately pending motions. Having examined petitioner's § 2255 motion pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, the United States Attorney is DIRECTED

to file an Answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other

response as appropriate to the above-filed § 2255 motion within forty (40) days of the filing of this

order.

SO ORDERED, this the 17th day of June, 2014.

Your W. Dloregen LOUISE W. FLANAGAN

United States District Judge

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